

CONGRESSIONAL OVERSIGHT OF INTELLIGENCE

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Summary of Issue

Oversight of foreign intelligence agencies and activities is presently conducted primarily by intelligence subcommittees of the House and Senate Armed Services Committees, and by counterpart subcommittees of the House and Senate Appropriations Committees. The creation of the Select Committee on Intelligence indicates a prevailing belief that these arrangements have not provided continuing and challenging oversight. The recommendation made most often to improve oversight is to create a permanent joint committee of the Congress for this purpose.

The Rockefeller Commission, for example, recommended the creation of a "Joint Committee on Intelligence to assume the oversight role currently played by the Armed Services Committees." (see Appendix 1) The Commission on the Organization of the Government for the Conduct of Foreign Policy (the Murphy Commission) recommended a Joint Committee on National Security, to review and coordinate the political, military, and economic aspects of foreign policy, in addition to exercising oversight of the foreign intelligence community. (see Appendix 2)

Such recommendations are not new. The Hoover Commission report of 1955 recommended "(t)hat Congress consider creating a Joint Congressional Committee on Foreign Intelligence, similiar to the Joint Committee on Atomic Energy." (see Appendix 3) Since the creation of the CIA in 1947, approximately 200 bills concerning U.S. intelligence organizations have been introduced. According to the Library of Congress, "(t)he majority of these bills represented attempts to establish a Congressional committee to oversee the activities of the CIA. Only two of these oversight bills ever reached the floor of Congress, where both were decisively defeated by more than two-thirds majorities."

These recommendations have reflected a belief that the subcommittees currently charged with oversight of foreign intelligence have neither sought nor received the information which effective oversight requires. (for a discussion of intelligence oversight, see Appendix 4) For example, the intelligence oversight subcommittee of the House Armed Services Committee had no formal meetings during the 92nd Congress. The record of meetings held by all the present oversight subcommittees since 1955 tends to confirm that Congressional oversight of foreign intelligence has been sporadic at best. (see Appendix 5)

Oversight of domestic intelligence agencies and activities is primarily the responsibility of the House Committees on the Judiciary and on Ways and Means. These committees (and the House Committee on Government Operations) are now more actively engaged in intelligence oversight than they have been in recent years..

The materials which follow are provided with the assumption that this Committee will consider recommending the creation of a permanent and separate oversight body for all or part of the intelligence community. Its mandate may be limited to the foreign intelligence agencies, or it may include both foreign and domestic intelligence agencies and activities. Be-

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cause of the prominent attention given to proposals for a joint committee, the staff has focused its efforts on the issues which will arise concerning such a recommendation. However, many of the same questions and considerations would apply to a recommendation for the creation of a separate House committee, though the specific alternatives would obviously require reformulation.

Other issues related to Congressional oversight of intelligence will be addressed separately. These include: (1) fiscal procedures and controls; (2) the role of the General Accounting Office; and (3) Congressional procedures for obtaining and handling information classified under Executive Order.

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Observations on Joint Committees

Joint committees have been proposed much more often than they have been created. Such committees have generally been established (a) when an issue develops that cannot be handled adequately within the existing committee structure, and (b) when there are compelling reasons for unitary Congressional action.

The Library of Congress has prepared for this Committee a compilation of information on the 30 major joint committees of Congress established since the Civil War. A chart summarizing some of the information provided by this study is attached as Appendix 6. Another chart, comparing three of the major joint committees now in existence, is attached as Appendix 7.

Following are brief notes on the five major, existing joint committees.

1. The Joint Committee on Atomic Energy

The Joint Committee on Atomic Energy (JCAE) was established by the Atomic Energy Act of 1946 to meet demands for close Congressional scrutiny of a new and highly sensitive development. (for statutory provisions, see Appendix 8) As one Senator commented during floor consideration of the Act, "Nothing could be so necessary as that Congress should have the means of watching over this new and powerful organization (AEC), to assist it with new laws when new laws are required, to assess its operations and alter its powers and structure when necessary, to be ready to adapt it continuously to changing circumstances."

A precedent for the establishment of the JCAE was the means by which the government's atomic energy program was hidden from Congressional scrutiny during World War II. Requests for appropriations were disguised as parts of budgets for a number of agencies, and were approved by the Chairmen of the House and Senate Committees on Appropriations and Military Affairs. Congressional experience with such an arrangement, and its success in preserving secrecy during the war, may have contributed to Congressional willingness to create a permanent joint committee.

The success of the JCAE has been attributed to several other, less formal and predictable, factors: (see, for example, Appendix 9)

1. The Committee's chairmen have taken the initiative to ensure that the Committee is fully informed about AEC programs.
2. The Committee has rarely been hampered by partisanship; differences of opinion seldom divide along party lines.
3. The Committee's members have tended to consider issues in a broader context of lay experience than do the experts available to advise them.

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4. Practices of close cooperation and mutual understanding have developed between the Committee and the AEC.
5. The staff is non-partisan and well informed about AEC operations.
6. The Committee has shown marked restraint in obtaining and handling classified information.
7. The Committee's successful track record has led both the Congress and the executive branch to give great weight to its decisions and recommendations.
8. The Committee's prestige and record of success have created an esprit de corps and sound working relationship among its members.

The JCAE is the only joint committee of the Congress with the authority to report legislation. It is a full legislative committee, with all the powers normally reserved to standing committees, including, by a 1963 amendment, authority over AEC (now ERDA and NRC) authorizations.

2. The Joint Committee on Internal Revenue Taxation

The Joint Committee on Internal Revenue Taxation (JCIRT) was established by the Revenue Act of 1946. (see Appendix 10) Stimulating its creation were revelations of tax evasion, aided by misconduct on the part of Internal Revenue Bureau employees, which were brought to light by the Senate Select Committee to Investigate the Internal Revenue Bureau. Creation of the JCIRT was also seen by some members as a way to undercut proposals then being considered to make all tax returns public.

The JCIRT acts primarily as a holding company for professional staff who assist the Ways and Means and Finance Committees; it has been characterized as a technical advisory body to its parent committees in the House and Senate. The JCIRT is authorized to make investigations, hold hearings, and issue subpoenas. It has no legislative authority.

The JCIRT has been successful for at least three reasons:

1. It deals with a technical and complex subject which is familiar only to a very few legislators.
2. No jurisdictional problems were raised by its creation, because the JCIRT was granted only limited advisory authority.
3. The staff is professional and highly respected as being objective and non-partisan.

3. The Joint Economic Committee

The Joint Economic Committee (JEC) was established by the Employment

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Act of 1946, the origins of which can be traced to the depression of the '30s. (see Appendix 11) The JEC was established with the intention of institutionalizing Congressional participation in the formulation and review of national economic policy. (The Council of Economic Advisors, the executive branch counterpart of the JEC, was created by the same Act.) The charter of the JEC directs it to study, review, recommend, investigate, and report on the whole range of economic policy issues. The JEC has no legislative authority, nor is it empowered to issue subpoenas.

The JEC has proven to be an effective forum for ventilating divergent views on economic conditions and policies. The impact of its hearings and reports on subsequent actions by the standing committees of Congress is less clear.

4. The Joint Committee on Defense Production

The Joint Committee on Defense Production (JCDP) was established by the Defense Production Act of 1950, and is composed of five members from each of the House and Senate committees on banking. (see Appendix 12)

The purpose of the JCDP is to "make a continuous study of the programs authorized by the Act, and to review the progress achieved in the execution and administration of such programs. Upon request, the committee shall aid the standing committees of Congress having legislative jurisdiction over any part of the programs authorized by the Act." The Committee is authorized to hold hearings and issue subpoenas; executive departments and agencies are required by statute to consult with the Committee at its request.

The JCDP was created during the Korean War, when wage and price increases were causing serious economic dislocations. These conditions were one factor leading to the Committee's creation. Other factors also contributed to its creation and longevity:

1. The JCDP's lack of legislative authority has avoided jurisdictional conflicts with standing committees.
2. Drawing the Committee's membership from standing committees has also helped to avoid conflicts between the joint committee and other standing committees.
3. The JCDP has been relatively inactive and inconspicuous.

5. The Joint Committee on Congressional Operations

The Joint Committee on Congressional Operations (JCCO) was created by the Legislative Reorganization Act of 1970 to make a continuing study of the organization of Congress and to recommend improvements in its organization and operations. (see Appendix 13) The intent of Congress was to institutionalize the kind of self-examination which had previously been only sporadic, in such forms as the Joint Committees on the Organization of Congress of 1945-46 and 1965-66.

The JCCO has authority to issue subpoenas, but not to report legislation. In fact, it is specifically prohibited from making any recommendations with respect to the rules, parliamentary procedures, or precedents of either house. Among existing major joint committees, the JCCO is unique in that the Act creating it specifically limits the size of its staff and requires that its staff be appointed "on a permanent basis, without regard to political affiliation and solely on the basis of fitness to perform their duties."

Unsuccessful proposals for joint committees

Many proposals for the creation of joint committees have failed. For example, many bills were introduced to provide for a Joint Committee on the Budget, none of which were enacted. Such bills were passed by the Senate several times, but never by the House, primarily because House members feared that such a joint committee would intrude on the House's unique constitutional power to initiate revenue bills and its traditional power to initiate appropriations bills. Although the Joint Study Committee on Budget Control recommended creation of such a joint committee, separate House and Senate budget committees were ultimately created by the Budget Control and Impoundment Act of 1974.

An earlier failure was the Joint Committee on Foreign Economic Cooperation, authorized by the Marshall Plan legislation of 1948 to make a continuing study of U.S. assistance efforts and to review the progress achieved by such programs. The ten-member committee was composed of three Senators and Representatives from each of the foreign policy committees, and two Senators and Representatives from each of the Appropriations Committees. Appointments to the Joint Committee were made by the chairmen of the various standing committees involved.

The chairmen of the House and Senate Appropriations Committees proceeded to appoint themselves and their ranking minority colleagues as members. These members were already burdened with heavy responsibilities and could devote little time to the work of the Joint Committee. Further, the Democratic leadership was less than enthusiastic about the Committee, in part because the leaders played no part in selecting its membership. Finally, the Joint Committee suffered from charges that it intruded excessively into administrative details and delicate policy questions.

One year after the Joint Committee was established, the House instructed its delegation to a conference committee to refuse to approve an appropriation for the Joint Committee. The House formally withdrew from participation in 1950. At that time, members of the House contended that its own Committee on Foreign Affairs could adequately perform the review and study functions assigned to the Joint Committee. As a result, the House and its standing committees paid scant attention to the work of the Joint Committee.

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Joint committees on intelligence

Resolutions to create a joint committee on intelligence or on national security have frequently been introduced. In 1956, such a proposal, sponsored by Senator Mansfield, was reported favorably and debated on the floor, only to be defeated by a vote of 27 to 59. The arguments offered in opposition to this proposed Joint Committee on Central Intelligence are excerpted from the Senate floor debate and attached as Appendix 14. Ten years later, the Senate voted, by a margin of 61 to 28, to kill a similar proposal by recommitting it to the Committee on Armed Services.

As indicated earlier, however, proposals for such a joint committee continue to be made. The Library of Congress has prepared for this Committee's use a compilation of information on 36 bills and resolutions as representative of the far larger number of measures introduced since 1947 to create either a joint committee on intelligence or a standing committee on intelligence in the House or Senate. A chart summarizing this report is attached as Appendix 15.

Interest has persisted, as evidenced by hearings conducted in December of last year before Senator Muskie's Subcommittee on Intergovernmental Relations of the Senate Government Operations Committee. (for brief excerpts from these hearings and two recent newspaper articles, see Appendices 16-18)

Comments

The creation of new committees of the House runs counter to the spirit of recent efforts at legislative reorganization, which have emphasized the consolidation of committees and the integration of committee jurisdiction. The recent history of the House suggests that new committees will be created either in response to increased public pressure or interest--e.g., the Committees on Veterans' Affairs and Standards of Official Conduct--or in response to the development of a new and major public policy issue which overlaps the jurisdiction of existing committees--e.g., the Committees on the Budget and on Science and Technology.

A proposal for a new committee becomes especially attractive when it would fulfill a perceived need for the Congress to take visible action on a delicate and difficult matter, and when there would otherwise be competition among existing standing committees for the new jurisdiction. By creating a Committee on Standards of Official Conduct, the House responded to pressure that it put its own house in order. By creating a Committee on Science and Technology, the House avoided what might otherwise have become an intense competition among existing committees for control over a new and growing public program.

The incentives for creating a new committee of the House may also lead to the creation of a new joint committee instead. Certainly the creation of the Joint Committee on Atomic Energy also avoided competition for jurisdiction among House committees. But the fact that so few per-

manent joint committees have been created indicates that members of the Congress have generally been convinced that such committees are unnecessary or undesirable--or at least less necessary and desirable than standing House committees. Among the arguments which have been made--some publicly, some privately--are the following:

1. Joint committees violate normal House procedures for conducting its business through standing committees.
2. Joint committees threaten the independence and institutional integrity of the House.
3. Joint committees short-circuit independent consideration and action by the House and the Senate--one body guarding against potential errors and excesses of the other.
4. Joint committees tend to be dominated by their Senate members who receive the public credit for work done primarily by the House members.
5. By implication at least, creation of a joint committee denigrates the performance of the chairmen and members of the standing committees from which the joint committee draws its jurisdiction.
6. In the case of foreign affairs--and arguably, in the case of intelligence--the Senate enjoys a pre-eminent constitutional role which would be compromised by creation of a joint committee.

The arguments which have been offered successfully in favor of proposals to create joint committees are generally three:

1. There is a compelling need for secrecy and for limiting the dissemination of information--e.g., the Joint Committee on Atomic Energy.
2. There is a compelling need for close coordination between the House and the Senate--e.g., the Joint Committee on Internal Revenue Taxation.
3. There is a compelling need for action, or at least the appearance of action, by the Congress as an institution--e.g., the Joint Economic Committee.

Efforts to create a joint committee will be enhanced if the proposal is framed in a manner which will not impinge on the power and prerogatives of the standing committees, their members and chairmen. The JCIRT and JCDP draw their membership exclusively from one standing committee of each house. Only one of the five major joint committees, the JCAE, has authority to report legislation. Unfortunately, the characteristics of a proposed joint committee which will minimize opposition to its creation are also characteristics which will tend to limit the independent contribution it can make to national policy once it is created.

Issues and Alternatives

Should the Committee decide to recommend the creation of a joint committee, it may also make specific recommendations regarding the joint committee's organization, procedures, and authority. Should the Committee make its recommendation only in general terms, its members will almost certainly be intimately involved in subsequent discussions concerning the specific form the joint committee should take. Following is a discussion of the major issues involved, together with alternative recommendations for the Committee's consideration. The provisions discussed are:

1. number of members
2. division of members between houses
3. division of members between parties
4. selection of members
5. selection of chairman
6. length of service.
7. staff
8. subpoena authority
9. security
10. jurisdiction
11. authority

Each of these issues is discussed separately, the most delicate and controversial being saved for last. The Committee will appreciate that the various provisions are not fully independent of each other.

1. Number of members

There is no rule or formula for determining how many members should serve on Congressional committees. For example, standing committees of the House now range in size from 12 (Standards of Official Conduct) to 55 (Appropriations). Membership on the major joint committees ranges from 10 to 20, the Joint Committee on Internal Revenue Taxation being the smallest and the Joint Economic Committee the largest.

The Joint Committee on Atomic Energy, with legislative authority and jurisdiction over secret matters, has a membership of 18. The combined membership of the current House and Senate select committees is 24 (13 in the House, 11 in the Senate).

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In determining the size of a joint committee, two considerations must be balanced: (1) the larger the committee, the greater the potential security problems; (2) the smaller the committee, the stronger the argument that intelligence oversight will continue to be exercised by a small handful of members, rather than by a group of members large enough to be representative of the Congress as a whole.

More mundane considerations include the following: (1) the total number of members must be divisible by two if the two houses are to have delegations of equal size; and (2) the total number of members must be divisible by four if each delegation is to include an equal number of Democrats and Republicans.

Further, the larger the total membership of the joint committee, the more closely each delegation can mirror party strength in its parent house, and the spectrum of political views represented.

Of the 30 earlier joint committees examined by the Library of Congress, almost 2/3 of them ranged in membership from 10 to 15; only 4 of the 30 had a total membership of more than 16 members. Of the 18 proposed joint committees on intelligence included in the Library's other study, 12 of them ranged in membership from 10 to 15; the remaining 6 proposed a membership of either 16 or 18.

The Committee may consider alternatives ranging at least from 10 to 20 members, depending on the balance it strikes between security and representativeness. A membership of 10 would more or less dictate a 3:2 party division in each delegation. A membership of 20 would provide greater flexibility in that party divisions could range from 5:5 to 7:3. Note that a 20 man committee permits equal party representation whereas a 10 man committee does not.

2. Division of members between houses

All current joint committees are composed of House and Senate delegations which are equal in size. The same is true of all previous joint committees and proposed joint committees on intelligence which have been examined.

3. Division of members between parties

There are at least four possibilities concerning the party division within the delegation representing each house:

1. The party division for the House delegation may be proportional to the party division for the whole House, and similarly for the Senate delegation.
2. The party division for each delegation may be proportional to the party division for the Congress as a whole, ensuring that there is the same party division within each delegation.

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3. Each delegation may be divided equally between the two parties.
4. The representation of the minority party on each delegation may be somewhat more than proportional, but somewhat less than equal.

The major joint committees now have their party divisions for each delegation fixed by statute: JEC at 6:4, JCIRT at 3:2, JCAE at 5:4, and JCCO at 3:2. In each case, the party division appears to reflect the 4th alternative--what might be called muted partisanship. The same preference seems to have been reflected in the creation of the Senate's select committee on intelligence, which has a party ratio of 6:5. By contrast, the House Select Committee's party ratio of 9:4 reflects the current party division within the House.

Of previous joint committees, $\frac{1}{2}$ had a party division reflecting muted partisanship, $\frac{1}{4}$ had equal party representation, and $\frac{1}{4}$ gave the majority party a 2:1 advantage. Fourteen of the 18 proposed joint committees on intelligence also were characterized by muted partisanship (of the other four, 2 provided for equal representation, and 2 provided for a 2:1 majority party advantage).

The argument in support of muted partisanship would apparently be that (1) equal party representation increases the likelihood of stalemate, but that (2) the subject matter of the joint committee is too important for the committee's work to be dominated by partisanship (or even the appearance of partisanship), and, therefore, that (3) near equality of party representation precludes both the fact and appearance of excessive partisanship while recognizing that there is a Congressional majority party.

In principle, the Committee may recommend a party division reflecting any of the four possibilities listed above. In practice, there are striking similarities among the statutory provisions concerning past, present, and proposed joint committees. A recommendation by the Committee which departs from these precedents will almost certainly be more controversial than a recommendation that conforms to them.

Past practice, therefore, suggests the following guidelines: (1) that the party division within each delegation should be fixed, rather than variable, and (2) that the party division within each delegation should give the majority party a minimal advantage.

Alternatively, the Committee may recommend equal representation of the two parties, thereby eliminating any possibility or appearance of partisan domination.

The Committee will note that its recommendation concerning party representation will be related to its recommendation concerning the total size of the joint committee.

4. Selection of members

The Committee may consider several alternative methods for selecting

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members to serve on the joint committee:

1. "At large": The members of each delegation may be chosen in the same way that each house selects the members of other committees.
2. "From interested committees": The members of each delegation may be selected from among the membership of existing committees with an interest in or present jurisdiction over intelligence agencies and activities, the selections to be made either by the committees involved (or their chairmen) or by the presiding officers of each house; or
3. "Hybrid": The members of each delegation may be selected by a combination of the above methods, in which case the key question becomes what proportion of the joint committee's membership should be drawn from "interested" committees and what proportion should be chosen "at large."

The following arguments may be offered in support of selecting the joint committee's members from the members of "interested" standing committees of each house--e.g., Armed Services, Foreign/International Relations, Appropriations, Judiciary, etc., depending on the scope of the joint committee's jurisdiction:

1. Such overlap will minimize opposition to the joint committee's creation by the members and leaders of the "interested" standing committees.
2. This procedure will best take advantage of the expertise and experience already developed by members of these standing committees, and ensure coordination between the standing committees and the joint committee.
3. It will minimize the number of additional members of Congress who must be given access to highly sensitive information, and will thereby minimize the dangers of unwarranted disclosures.
4. This procedure may well result in an over-representation of senior members known to their colleagues as particularly responsible and effective--thereby increasing the likelihood that the joint committee will act judiciously and that its recommendations will be considered favorably by the Congress. (Whether or not this occurs may depend on whether the joint committee's members are selected by the "interested" committees' members or chairmen, by the presiding officers, or by some other method.)

The following arguments may be offered in opposition to over-lapping membership and in support of selecting the joint committee's delegations in the same way that members of other committees are chosen:

1. Members serving on a major committee of the House in addition to the joint committee will have little time to devote to the work of the joint committee. (see page 6 on the Joint Committee on Foreign Economic Development)

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2. A joint committee selected "at large" is more likely to be representative of the House and Senate as a whole.
3. The joint committee is being recommended in response to a history of inadequate Congressional oversight by the members of "interested" committees. There is little reason to expect the approach and beliefs of these members to change simply by reconstituting them as a joint committee.
4. The success of the joint committee will depend less on the expertise of the members appointed to it than on their sensitivity to the requirements of effective Congressional oversight.

Arguments comparable to these were made during consideration of the Budget Control and Impoundment Act of 1974. The Joint Study Committee on Budget Control recommended the creation of a joint committee with a membership drawn primarily from the House and Senate Committees on Appropriations and Ways and Means/Finance. The fear was later expressed that the inevitable result would be a committee biased in favor of "fiscal conservatism." When the House Budget Committee was subsequently established, its members were chosen as follows: 5 from Ways and Means, 5 from Appropriations, 13 "at large," plus one representative each from the majority and minority leadership.

Whether such a hybrid method combines the best or the worst of both alternatives is a question for the Committee to consider. In weighing this third alternative, the Committee will need to consider (1) whether the membership from "interested" committees should constitute a majority of the joint committee's membership, and (2) how these members should be chosen--whether by the standing committee itself, by that committee's chairman, by the party leaders or presiding officers in each house, or by the regular procedures for allocating committee assignments. Different answers to these two questions will have different implications for the attractiveness of the hybrid selection method.

Of the five current joint committees, three have members appointed "at large" by the presiding officers of the House and Senate--JCAE, JEC, and JCCO. The members of the JCDF are appointed solely from "interested" committees by the committees' chairmen. The members of the JCIRT are appointed solely from "interested" committees and are chosen by the committees.

The members of 23 of 28 previous joint committees (82%) were appointed by presiding officers. All of the 18 earlier proposals for a joint committee on intelligence provided that members were to be chosen by the presiding officers or party leaders.

Comparable data, also drawn from the Library of Congress studies, follows concerning what members were or should be selected:

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	<u>"At large"</u>	<u>"From interested committees"</u>	<u>Hybrid</u>
Previous joint committees	57%	37%	7%
Proposals for a joint committee on intelligence	72%	17%	11%

5. Selection of chairman

During the 83rd Congress, the Joint Committee on Atomic Energy was stymied for six months over the selection of a chairman. The Senate members contended that Senators should chair joint committees, especially one with the foreign policy implications of atomic energy. The House members contended that the chairmanship should be rotated between the House and Senate delegations. The principle of rotation ultimately prevailed.

The rules of at least three current joint committees--JEC, JCAE, and JCCO--provide that the committee's chairmanship shall alternate between the House and the Senate from one Congress to the next. The chairmen of the JCAE and JCCO are chosen by the delegation entitled to the chairmanship during that Congress. The rules of the JCDP and JCIRT only require that each joint committee shall select a chairman from among its members. The rules of the JEC imply that its chairman shall be selected by seniority.

All of the earlier joint committees and proposed joint committees on intelligence examined by the Library of Congress provided for a chairman to be selected by the entire joint committee or by one of its delegations. The latter provision has become increasingly common in recent years.

Although the Committee may recommend any principle of selection it chooses, there is a strong precedent for rotation between House and Senate, and for the choice to be made by vote of the appropriate delegation.

6. Length of service

The Committee may wish to consider recommending a limit on how many terms (or years) any member of Congress may serve on the joint committee. There is a precedent for such a policy in the House Rules governing the Committee on the Budget. No member, including the Committee's chairman, may serve on the Budget Committee for more than two of five successive Congresses (for more than four of any ten years).

Arguments in support of such a limitation are the following:

1. It would minimize the likelihood that, over time, the joint committee would be "coopted" by the intelligence community, becoming its defender and protector, rather than its skeptical overseer.

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2. It would ensure that, over time, a representative cross-section of the Congress would serve on the joint committee, expanding the Congress' collective knowledge of and sensitivity to intelligence matters.

3. Oversight of the intelligence community does not require specialized expertise (which would develop with years of continuous service) as much as it requires sensitivity to democratic values and a sense of perspective (which might atrophy with years of continuous service).

Arguments against such a limitation are the following:

1. The number of members who ever have access to highly sensitive intelligence should be kept to a minimum.
2. Continuous membership is required to develop the expertise which effective oversight requires, especially given the secrecy and technological sophistication of many intelligence activities.
3. Limited tenure would make service on the joint committee unattractive to capable members who would prefer to serve on a standing committee with the prospect of eventually achieving a leadership position.

The limit on length of service for members of the House Budget Committee is unique, but it does provide a precedent, should this Committee choose to make such a recommendation.

7. Staff

The Committee may choose to leave questions concerning the joint committee's staff for the joint committee to resolve for itself, once it has been established. Alternatively, the Committee may choose to specify the size and nature of the staff.

Specifically, the Committee may make recommendations concerning the size of the staff, whether it should be partisan or non-partisan, and whether it should be legislative or investigative in focus. The size and character of the staff will be particularly important for a joint committee on intelligence, because it will probably be a second committee assignment for most or all of its members, who will have limited time to conduct their own investigations of often esoteric and always secretive intelligence activities.

Joint committees, especially the JCIRT and JCAE, have opted for non-partisan staffs, and the Committee may choose to make such a recommendation, especially to alleviate fears that the joint committee might be influenced by partisan considerations. Alternatively, the Committee may conclude that a partisan staff can act in a professional manner while also ensuring that different opinions and perspectives will be presented to the joint committee's members.

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Further, the Committee may recommend that some limitation be placed on the length of service for staff members. Many of the arguments described in section 6 above may also be applied to continuous service by staff.

Finally, the Committee may wish to consider whether the joint committee should be precluded from hiring some or all persons who have worked for an intelligence agency. An argument for such a limitation would be that the joint committee should avoid even the appearance of being dependent on or compromised by the biases of the intelligence community. An argument against such a limitation would be that such persons, who have some personal knowledge of the programs and procedures of the intelligence community, would be of special value to the joint committee.

Almost without exception, the legislation, enacted and proposed, to create earlier joint committees included only a general statement concerning staffing.

8. Subpoena authority

The Joint Committees on Atomic Energy, Internal Revenue Taxation, Congressional Operations, and Defense Production have authority to issue subpoenas. The Joint Economic Committee does not.

A majority of earlier joint committees had subpoena authority. All of the proposed joint committees on intelligence examined by the Library of Congress were intended to have such authority.

The Committee may recommend that the joint committee be given this authority as a necessary investigative device.

9. Security

Procedures for obtaining, protecting, and releasing classified information will have an important bearing on the impact of the joint committee. Materials on these issues will be provided separately.

10. Jurisdiction

The jurisdiction of the joint committee may be described, in whole or in part, in terms of either activities (i.e., intelligence and intelligence-related) or agencies (e.g., CIA, IRS, etc.). If the Committee recommends a statement of jurisdiction which includes reference to "intelligence," it may be challenged on the grounds that the term is undefined and imprecise. And, in fact, the staff has not been able to find or devise a fully satisfactory definition. But the Committee will note that "intelligence" has been used in Congressional actions at least from 1947 (the National Security Act of 1947, creating the CIA) to the present (H. Res. 591, creating this Select Committee). The Committee may conclude, therefore, that the term has a recognizable and generally accepted meaning, however difficult it may be to define concisely and precisely.

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The Committee may make various recommendations concerning the jurisdiction of the joint committee. Among the alternatives are the following:

1. Jurisdiction over all intelligence activities, foreign and domestic, by all federal agencies and departments (perhaps with the phrase: "including, but not limited to, the following agencies and departments").
2. Jurisdiction over all foreign intelligence agencies and activities (perhaps with specific reference to CIA and to the Departments of State and Defense or components thereof).
3. Jurisdiction over the CIA only.
4. Jurisdiction over all aspects of national security policy, including but not limited to foreign intelligence.
5. Jurisdiction over all aspects of government information policies, including but not limited to intelligence activities (e.g., freedom of information, right to privacy, data banks, etc.).

The Committee will recognize that the decision concerning jurisdiction cannot be isolated from a decision concerning the joint committee's authority--a matter to be considered in the next section. The Committee will also appreciate that the broader the scope and authority of the proposed joint committee, the more widespread and intense the opposition the proposal is likely to arouse from members of the affected standing committees. A list of committees and subcommittees, with their chairmen and ranking minority members, which now claim jurisdiction over some aspect of government intelligence and information activity is attached as Appendix 19.

In addition to considering how broad a charter would be acceptable to the House, the Committee's recommendation concerning jurisdiction will reflect a choice (or balance) between an emphasis on coordination and an emphasis on concentration. The broader the mandate of the joint committee, the greater its ability to take a broad overview of intelligence activities in the context of other government activities, and to enhance coordination among the many government agencies involved. Conversely, the broader the joint committee's mandate, the less it will be able to concentrate on any single aspect of intelligence activity. Especially in light of the complexity and secrecy of many intelligence programs and operations, a broad mandate may inevitably result in superficial and ineffective oversight.

The Committee may note that, of the 32 proposals for intelligence oversight committees analyzed by the Library of Congress, only 8 provided for jurisdiction over both foreign and domestic intelligence activities. Twenty-three would have limited jurisdiction to foreign intelligence agencies and activities (stated in such terms, or by reference to specific agencies or to intelligence affecting the national security). Of the 18 proposed joint committees described, 14 were limited in jurisdiction to foreign intelligence.

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11. Authority

With regard to the joint committee's authority, the Committee may choose from at least four alternatives:

1. The joint committee shall have no legislative authority. It shall study and investigate, and report its findings and recommendations to the standing committees which will retain their present legislative jurisdiction.
2. The joint committee shall have full and sole legislative and oversight authority for the activities and agencies within its mandate. This shall include the power to report authorizing legislation for each of the agencies within its jurisdiction. (This assumes new statutory requirements that intelligence agencies be subject to annual or periodic authorizing legislation. It would also necessitate, for example, that authorizing legislation for the Department of Justice be considered first by the Judiciary Committee and then referred to the joint committee for action on authorizations for only the intelligence activities of the FBI.)
3. The joint committee shall have sole oversight jurisdiction but shared legislative authority for the activities and agencies within its mandate. All legislation, including authorizations, will first be considered by one of the present standing committees in each house. All provisions of such bills concerning intelligence will then be referred to the joint committee for its review and recommendations.
4. The joint committee shall have full and sole legislative authority, but shared oversight jurisdiction over the activities and agencies within its mandate. Oversight jurisdiction will be shared with the standing committees of both houses.

In considering these and other possible alternatives, the Committee may wish to take into account the likely reactions of the standing committees and their members whose powers and jurisdictions would be differently affected by different alternatives. A plausible presumption would be that giving a joint committee legislative authority will be opposed by the standing committee now enjoying such authority.

The Committee may also consider the probable relationship between the joint committee's legislative authority and its effectiveness. In this regard, plausible presumptions would be (1) that a joint committee with investigative powers only would be less attractive to potential members (and, therefore, receive less of its members' time and attention) than a joint committee with both oversight and legislative authority; and (2) that a joint committee without legislative authority would lack the "clout" necessary to ensure cooperation from the intelligence community, whose budgets would not be directly affected by the joint committee's findings and recommendations.

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The Committee may seek a balance between the need to minimize opposition to its recommendation and its desire to recommend a joint committee with the power to function most effectively. It may therefore consider the third and fourth alternatives above which provide that the legislative or oversight jurisdiction over the intelligence community be shared between the joint committee and the present standing committees of both houses.

Only 2 of the 29 previous joint committees created by the Congress and analyzed by the Library of Congress were granted authority to report legislation (the JCAE and a joint committee on government reorganization created in 1920). Twenty-seven of these 29 committees were limited to making studies and reporting their findings for subsequent action by the standing committees.

Conversely, 13 of the 18 proposed joint committees on intelligence, as described by the Library of Congress, were to have authority to report legislation. Sponsors of these proposals contended that the field of intelligence should be considered analagous to the field of atomic energy, and that the Congress should create an intelligence counterpart to the JCAE. The analogy holds in that both atomic energy and intelligence involve highly sensitive information vital to national security. It should also be noted, however, that the JCAE was created in response to the emergence of a new and critical development which might otherwise have been plausibly assigned to more than one standing committee. By contrast, standing committees already enjoy jurisdiction over intelligence activities (leaving aside the question of how such authority has been exercised).

With respect to the JCAE, the Committee may also consider three other points. First, the Atomic Energy Act requires the AEC (now ERDA and NRC) to keep the Joint Committee "fully and currently informed" about its activities. According to George Murphy, Executive Director of the JCAE, this affirmative obligation has been important in ensuring agency cooperation with the Joint Committee.

Second, the history of the JCAE suggests that the legislative activities of a joint committee on intelligence with such authority would tend to become limited and routine after its first few years in existence. Should the Congress create a joint committee with legislative authority, it would most likely consider some of the other recommendations this Committee may make. Once it has completed action on any such remedial and clarifying legislation, it would probably focus most of its legislative activity on authorizing legislation and devote most of its time and staff resources to its oversight responsibility.

Third, the Standing Orders of the Senate provide that the Senate members of the JCAE shall conduct confirmation hearings, when appropriate, in the same manner as standing Senate committees. The Committee may wish to include a comparable recommendation concerning confirmation of future Directors of Central Intelligence.

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Conclusion

When the Committee considers whether or not to recommend creation of a new joint committee, it may wish to consider what the organization and authority of such a committee should be. The members may conclude, for example, that they would support a recommendation for a joint committee only under certain conditions concerning its membership, jurisdiction, or authority. For the Committee's consideration, four alternative models (combining different elements of the alternatives discussed in the preceding sections) are included as Appendix 20.